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9 UNITED STATES DISTRICT COURT

10 FOR THE CENTRAL DISTRICT OF CALIFORNIA

11 JOSE ANTONIO GOMEZ-CUZME,

12 Petitioner,

13 v.

14 B. BIRKHOLZ,

15 Respondent.

No. 2:23-cv-01753-ODW-SHK

REPLY IN SUPPORT OF RESPONDENT'S  
MOTION TO DISMISS PETITION FOR  
WRIT OF HABEAS CORPUS

16 Respondent B. Birkholz, Warden of the United States Penitentiary  
17 at Lompoc, California, by and through his attorney of record, the  
18 United States Attorney for the Central District of California and  
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1 Assistant United States Attorney Jeremy K. Beecher, respectfully  
2 submits this Reply in support of his Motion to Dismiss Petitioner  
3 Jose Antonio Gomez-Cuzme's Petition for Writ of Habeas Corpus.

4 Dated: May 30, 2023

Respectfully submitted,

5 E. MARTIN ESTRADA  
6 United States Attorney

7 MACK E. JENKINS  
8 Assistant United States Attorney  
9 Chief, Criminal Division

10 /s/  
JEREMY K. BEECHER  
Assistant United States Attorney

11 Attorneys for Respondent  
12 B. BIRKHOLZ  
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**REPLY IN SUPPORT OF MOTION TO DISMISS**

Petitioner's opposition to Respondent's Motion to Dismiss rests on two arguments, neither of which is supported by law.<sup>1</sup>

First, Petitioner is incorrect that he is not subject to a final order of removal because his removal order was not issued by an immigration court. In support of this argument, Petitioner points to a regulation governing immigration courts and defining when an immigration court's order of removal becomes final. See 8 C.F.R. § 1241.31. As set forth in Respondent's Motion to Dismiss, however, the Immigration and Nationality Act permits immigration officers to issue final orders of removal outside the immigration court system. See 8 U.S.C. § 1225(b)(1). The Act limits review of such orders of removal to circumstances not present here. 8 U.S.C. § 1225(b)(1)(C). Petitioner is simply wrong that a final order of removal must have been issued by an immigration court, and the regulation Petitioner cites is wholly irrelevant here.

Second, Petitioner offers no cogent reason that he should not be required to exhaust administrative remedies before seeking relief in this Court. Petitioner's argument that the very fact of BOP's defense in this case makes administrative exhaustion futile is circular and would obviate that requirement in essentially every case, which the law does not permit. See Martinez v. Roberts, 804 F.2d 570, 571 (9th Cir. 1986). Further, a core purpose of the exhaustion requirement is to allow BOP to develop a full factual and

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<sup>1</sup> Petitioner's opposition is also untimely by nearly two months. (Dkt No. 4.) As a result, the Court should adhere to its April 25, 2023, minute order and deem Respondent's Motion to Dismiss unopposed. (Dkt No. 10.)

1 legal record before judicial review occurs. See Ruviwat v. Smith,  
2 701 F.2d 844, 845 (9th Cir. 1983) (exhaustion requirement permits the  
3 "appropriate development of a factual record in an expert forum[,]  
4 conserve[s] the court's time because of the possibility that the  
5 relief applied for may be granted at the administrative level[,], and  
6 allow[s] the administrative agency an opportunity to correct errors  
7 occurring in the course of administrative proceedings"). This case  
8 underscores the need for such a record. Finally, Petitioner  
9 belatedly filed an administrative remedy request following  
10 Respondent's Motion to Dismiss, which further underscores that  
11 Petitioner can, in fact, seek an administrative remedy within BOP.  
12 He should therefore be required to exhaust that process before  
13 seeking relief from this Court.

14 Accordingly, for these reasons and those set forth in  
15 Respondent's moving papers, the Court should dismiss the Petition for  
16 Writ of Habeas Corpus.

CERTIFICATE OF SERVICE

I, Cissye Tyus, declare:

That I am a citizen of the United States and resident or employed in Los Angeles County, California; that my business address is the Office of United States Attorney, United States Courthouse, 312 North Spring Street, Los Angeles, California 90012; that I am over the age of eighteen years, and am not a party to the above-entitled action;

That I am employed by the United States Attorney for the Central District of California who is a member of the Bar of the United States District Court for the Central District of California, at whose direction I served a copy of: **REPLY IN SUPPORT OF RESPONDENT'S MOTION TO DISMISS PETITION FOR WRIT OF HABEAS CORPUS**

☐ Placed in a closed

☒ Placed in a sealed

envelope, for collection and interoffice delivery addressed as follows:

envelope, for collection and mailing via United States mail, addressed as follows:

**Jose Antonio Gomez-Cuzme  
REG. NO. 62280-298  
USP LOMPOC  
3901 KLEIN BOULEVARD  
LOMPOC, CA 93436**

This certificate is executed on May 30, 2023, at Los Angeles, California.

I certify under penalty of perjury that the foregoing is true and correct.

*Cissye Tyus*

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Cissye Tyus  
Legal Assistant